

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of WILLIAM BORASKI, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

WILLIAM BORASKI,

Respondent-Appellant.

UNPUBLISHED

October 26, 2004

No. 248353

Wayne Circuit Court

Family Division

LC No. 99-378453

Before: Griffin, P.J., and Saad and O’Connell, JJ.

PER CURIAM.

Respondent appeals as of right from an order of disposition entered following delinquency proceedings in which the court determined that respondent committed armed robbery, MCL 750.529. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent’s sole claim on appeal is that the evidence was insufficient to sustain the verdict. Respondent does not challenge the evidence as it relates to the elements of the crime, but contends that the victim’s inconsistent testimony, when countered by his alibi evidence, was insufficient to prove beyond a reasonable doubt that he committed the offense.

A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff’d 466 Mich 39; 642 NW2d 339 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). The trial court’s factual findings are reviewed for clear error. A finding of fact is considered “clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made.” *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

A witness’s positive identification of a defendant may be sufficient to support a conviction, despite the potential unreliability of such testimony. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Rose Ogrodnik testified that she was robbed by two teenage males, one white and one black. Although their faces were covered by masks, Ogrodnik

identified the white male as respondent (whom she had known since he was just an infant), stating that she recognized him by his build, gait, clothes, shoes, and voice. “Viewed most favorably to the prosecution, this evidence was sufficient to establish [respondent’s] identity beyond a reasonable doubt.” *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). Although Ogrodnik’s testimony conflicted in some respects with her statement to the police, “[t]he credibility of the identification testimony was a matter for the trial court, as the trier of fact, to decide. We will not resolve it anew.” *Id.* Although respondent and his mother testified that respondent could not have committed the offense because he was elsewhere at the time, the factfinder, be it the judge or the jury, “may choose to believe or disbelieve any witness or any evidence presented in reaching a verdict.” *People v Cummings*, 139 Mich App 286, 293-294; 362 NW2d 252 (1984). Because the trial court is in the best position to judge credibility, this Court will not substitute its judgment for that of the trial court but will defer to the trial court’s resolution of factual issues that involve the credibility of witnesses. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997); *People v Martin*, 199 Mich App 124, 125; 501 NW2d 198 (1993).

Affirmed.

/s/ Richard Allen Griffin
/s/ Henry William Saad
/s/ Peter D. O’Connell